vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.974 OF 2003

The State of Maharashtra ... Appellant

V/s.

Mohammad Raja Khudabaksh Shaikh ... Respondent

Mr.P.S. Hingorani, APP, for Appellant
Mr.R.C. Makhija for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 16, 2006**

ORAL JUDGMENT (PER PALSHIKAR, J.):

. Heard. This is an appeal by the State of Maharashtra seeking enhancement of sentence of the accused.

2. The I Adhoc Additional District and Sessions Judge, Thane convicted the accused in Sessions Case No.161 of 2003 under section 304 Part I of the Indian Penal Code and sentenced him to suffer imprisonment for 5 years. This order is challenged by the State basically on the ground that the punishment meted out is inadequate.

3. Few facts necessary for adjudication of this appeal stated briefly are that the accused and the victim were last seen together. They had consumed alcohol and both were in an inebriated condition.

Verbal exchange took place. This happened in the night of 18th and 19th January 2003 and the victim was found dead in the field the next day. The prosecution relied on the theory of last seen together. The learned trial Judge appreciated the evidence tendered by the prosecution in the shape of 9 witnesses and came to the conclusion that the prosecution has proved beyond doubt the guilt of the accused in causing homicidal death of the victim. The learned Judge found that there were strangulation marks on the neck of the victim. There were injuries on the hands of the accused. There was evidence of strangulation and therefore, it is obvious that the death was caused by the accused. The learned judge then took into consideration the attending circumstances, the inebriated condition of the victim and the accused, the altercation which took place between them and came to the conclusion that in that state of mind it may not be said that the accused had the intention to commit murder though he cannot escape the knowledge of likelihood of death by reason of being intoxicated. This reasoning led the learned Judge to convict the accused as aforesaid.

4. The learned Additional Public Prosecutor contended that being in a drunken state can be no defence and the learned Judge was more than lenient in convicting the accused only for five years.

5. In our opinion, the learned Judge has used his judicial discretion and from a scrutiny of the observations made by him in paragraphs 14 and 15 of the judgment, it cannot be said that the discretion was injudiciously exercised by him. Such being the case, in our opinion, there is no need to interfere with the quantum of sentence as ordered by the learned Judge.

6. In the result, the appeal for enhancement fails and is dismissed